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The Federal Funding Accountability and Transparency Act: Background, Overview, and Implementation Issues

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The Federal Funding Accountability and Transparency Act: Background, Overview, and Implementation Issues

Summary

On September 26, 2006, President Bush signed S. 2590, the Federal Funding Accountability and Transparency Act, into law (P.L. 109-282). In an attempt to expand oversight of federal spending, including earmarks, the new law requires the Office of Management and Budget (OMB) to establish a publicly available online database containing information about entities that are awarded federal grants, loans, and contracts. Federal agencies award over one trillion dollars annually in those three categories of financial assistance — \$460 billion in grants, \$360 billion in contracts, and \$260 billion in direct and guaranteed loans — accounting for nearly one-third of the federal government's total expenditures and obligations.

According to the sponsors of the legislation, the new database will deter “wasteful and unnecessary” spending, since government officials will be less likely to earmark funds for special projects if they know the public could identify how much money was awarded to which organizations, and for what purposes. S. 2590 was a companion bill to H.R. 5060, which also called for the creation of a federal awards database. The bills differed in several respects, however, most notably in that S. 2590 required information on federal contracts to be made available to the public, but H.R. 5060 did not. Because contracts represent over \$340 billion in federal awards, the scope of the Senate version was significantly broader.

While the intent of the legislation is widely lauded — it was endorsed by leaders of both parties and an array of business, union, and watchdog organizations — concern has been expressed by government officials and members of the public that issues surrounding implementation of the proposed database have not been adequately addressed. In particular, many observers question the reliability of information taken from the Federal Assistance Award Data System (FAADS) and the Federal Procurement Data System (FPDS), which are to be the primary sources of information for the public database. They note that information in FAADS and FPDS is often incomplete and inaccurate, and therefore may be of limited utility in identifying earmarks. Some observers also believe that the cost of establishing and maintaining the new database may exceed the Congressional Budget Office (CBO) estimate.

This report summarizes the legislative history and key provisions of P.L. 109-282 (S. 2590), compares it to H.R. 5060, and discusses challenges that are associated with implementing the new law’s proposed database and that may prove to be areas for future congressional oversight. This report will be updated as events warrant.

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The Federal Funding Accountability and Transparency Act: Background, Overview, and Implementation Issues¹

On September 26, 2006, President Bush signed into law S. 2590, the Federal Funding Accountability and Transparency Act (P.L. 109-282).² According to supporters of the new law, P.L. 109-282 is an attempt to reduce “wasteful and unnecessary spending” by the federal government, including spending on funds earmarked for special projects.³ To that end, the legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. Using the database, supporters assert, a citizen or watchdog group will be able to easily determine how much money was given to which organizations, and for what purposes.⁴ The premise of the new law is that by making the details of federal spending available to the public, government officials will be less likely to fund projects that might be perceived as wasteful. Supporters of the legislation also suggest that the new database will give citizens the opportunity to better understand how the government distributes funds and enable the public to become more involved in the discussion of federal spending priorities.⁵

Federal grants, loans, and contracts represent a significant element of federal spending. According to the most recent data available, federal agencies award over \$1 trillion annually in those three categories of financial assistance — \$460 billion

¹ CRS Information Specialist Merete Gerli collaborated in the preparation of this report.

² The White House, Office of the Press Secretary, “President Bush Signs Federal Funding Accountability and Transparency Act,” press release, Sept. 26, 2006.

³ Testimony of Sen. John McCain, in U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006, at [http://hsgac.senate.gov/_files/071806McCain.pdf]. For information on other recent earmark reform proposals, see CRS Report RL33397, *Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975*, by Sandy Streeter.

⁴ Testimony of Sen. Tom Coburn, *ibid.*

⁵ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Federal Financial Accountability and Transparency Act of 2006*, report to accompany S. 2590, 109th Congress, 2nd session, S.Rept. 109-329, at [[http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1\(sr329\)](http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1(sr329))].

in grants, \$360 billion in contracts, and \$260 billion in loans — accounting for nearly one-third of the federal government's total expenditures.⁶

This report initially discusses the background of S. 2590, noting in particular how it compared to similar legislation in the House of Representatives. It then discusses the Federal Funding Accountability and Transparency Act's provisions, noting what types of assistance are to be part of the new database, the primary sources of the data, and deadlines for implementation. Finally, the report identifies and discusses several issues that have been raised regarding the act that may affect its implementation, and that therefore may prove to be areas for future congressional oversight.

Background

Senator Tom Coburn, along with three cosponsors, introduced S. 2590 on April 6, 2006.⁷ On August 2, 2006, the Senate Committee on Homeland Security and Governmental Affairs unanimously reported S. 2590, with an amendment in the nature of a substitute.⁸ That same day, the committee's chair, Senator Susan Collins, and its ranking member, Senator Joseph Lieberman, requested that the bill be brought to the floor for a unanimous consent vote before the August recess commenced. This motion was blocked by an unnamed Senator, which delayed action on the bill until after the recess.⁹ On September 7, all holds were lifted and the Senate passed S. 2590 by unanimous consent.¹⁰ The House approved S. 2590, as passed by the Senate, by voice vote on September 13.¹¹ Later that same day both chambers agreed to S.Con.Res. 114, making enrollment corrections to S. 2590.¹² As noted previously, the President signed the bill into law on September 26, 2006.

⁶ U.S. Census Bureau, *Consolidated Federal Funds Report for Fiscal Year 2004*, Dec. 2005, p. v.

⁷ The other original cosponsors were Senators Tom Carper, John McCain, and Barack Obama.

⁸ There was no written report released on August 2, but the Senate Committee on Homeland Security and Governmental Affairs filed S.Rept. 109-329, to accompany S. 2590, on Sept. 8, 2006.

⁹ According to *Congressional Quarterly*, Senators Byrd and Stevens had both placed holds on the bill at different times. See Martin Kady II, "Frist Mobilizes Blogs to Muscle Two of Senate's Old Bulls on Database Bill," *CQ Today*, Sept. 6, 2006, at [http://www.cq.com/display.do?fL=3&docid=2365650&productId=4].

¹⁰ *Congressional Record*, vol. 151 (Sept. 8, 2006), pp. S9209-S9211.

¹¹ *Congressional Record*, vol. 152 (Sept. 13, 2006), pp. H6498-H6501.

¹² Ibid, pp. S.9563-S.9564. Ibid, pp. H.6501-H6502. This was an unusual step, as substantive differences between House and Senate versions of the same bill are typically worked out in conferences. In this case, the concurrent resolution was used to ensure the bill was passed prior to the approaching October recess.

S. 2590 received extensive bipartisan support at each stage of the legislative process. In the Senate, the bill was introduced with bipartisan sponsors, voted unanimously out of committee, and passed by unanimous consent. The legislation was ultimately cosponsored by 47 Senators, including Majority Leader Bill Frist and Minority Leader Harry Reid. In the House, S. 2590 was passed by voice vote under suspension of the rules, with members of both parties speaking in support of the Senate bill and none speaking against it.¹³ The White House did not issue a Statement of Administrative Policy on S. 2590, but President Bush did express his support in a press release distributed the same day the bill was enrolled, making it apparent he would sign the measure once he received it.¹⁴

According to Senator Coburn, S. 2590 was endorsed by over 150 organizations with a wide range of political leanings.¹⁵ The Senator's list of supporters included representatives of private enterprise, such as the U.S. Chamber of Commerce; unions, like the American Federation of State, County, and Municipal Employees; media groups, such as the American Society of Newspaper Editors; and government watchdog organizations, like OMB Watch. As evidence of the unusual alliance in support of S. 2590, the list indicated that both People for the Ethical Treatment of Animals (PETA) and Gun Owners of America supported the bill, as did both the National Gay and Lesbian Task Force and the Traditional Values Coalition.

Comparison to H.R. 5060

S. 2590 was a companion bill to H.R. 5060, which Representative Roy Blunt introduced on March 30, 2006, as an amendment to the Federal Financial Assistance Management Improvement Act of 1999. On June 21, 2006, the House passed H.R. 5060, as amended, by voice vote.¹⁶ According to Representative Blunt, the bill was intended to "increase accountability and transparency in the federal awards process" by establishing a public database with information on award recipients.¹⁷ While both S. 2590 and H.R. 5060 had similar objectives, the bills differed in important ways. **Table 1** highlights three of the most important differences between the engrossed bills.

¹³ *Congressional Record*, daily edition, vol. 151, (September 13, 2006), H6498-H6501

¹⁴ The White House, Office of the Press Secretary, "President Bush Applauds House Passage of S. 2590, the Federal Funding Accountability and Transparency Act of 2006," press release, Sept.13, 2006, at [http://www.whitehouse.gov/news/releases/2006/09/print/20060913-4.html].

¹⁵ Senator Coburn's office provided CRS with the list of supporters. Over 80 leaders of supporting groups signed "An Open Letter to Majority Leader Frist: Bring S. 2590 to the Floor for a Vote!", dated Sept. 6, 2006. See [http://www.cq.com/flatfiles/editorialFiles/budgetTracker/reference/docs/20060706database-ltr.pdf].

¹⁶ *Congressional Record*, vol. 151 (June 21, 2006), pp. H4335-H4338.

¹⁷ Rep. Roy Blunt, "Blunt-Davis Bill to Reform Federal Grants Process Passes House," press release, June 21, 2006, at [http://www.blunt.house.gov/Read.aspx/ID=653].

Table 1. Comparison of Selected Features in S. 2590 and H.R. 5060

Feature	S. 2590	H.R. 5060
<i>Contents of public database</i>	Grants, loans, and contracts all included	Grants and loans included, but contracts excluded
<i>Reimbursement for costs of new reporting requirements</i>	Recipients and subrecipients of federal assistance allowed to recover costs associated with collecting and reporting data on subrecipients	No reimbursement provided to recipients and subrecipients
<i>Subaward pilot program</i>	18-month pilot program authorized to evaluate options for government-wide subaward reporting policy	No pilot program authorized

Most notably, contracts were exempt from the public database under the House bill, but were covered in S. 2590. Since contracts are the second-largest category of federal domestic assistance, their exclusion would have significantly reduced the comprehensiveness of the database. When H.R. 5060 was first brought to the House floor in June, critics argued that a database without information on federal contracts was “missing a key component that is essential to public oversight.”¹⁸ Even some members who ultimately voted to pass the bill expressed concern that it did not include contracts.¹⁹ Supporters of H.R. 5060 maintained that a database primarily covering grants would still be a valuable tool, and the bill’s sponsors reportedly pledged to develop separate legislation enhancing public access to federal contract information.²⁰ After S. 2590 passed the Senate, some House members expressed a clear preference for the Senate version, which they argued was “stronger and more comprehensive” because it included contracts.²¹

Both S. 2590 and H.R. 5060 required the public database to include information on subrecipients, but only the Senate bill provided funding to cover the costs associated with collecting and reporting that information. Currently, data on

¹⁸ Rep. Danny Davis, “Amending Federal Financial Assistance Management Improvement Act of 1999,” remarks in the House, *Congressional Record*, daily edition, vol. 151 (June 21, 2006), pp. H4335-H4338.

¹⁹ Rep. Henry Waxman, *ibid.*

²⁰ Aimee Curl, “Transparency bill subjected to secrecy,” *Federal Times*, Aug. 14, 2006, p. 4. Rep. Danny Davis, *Congressional Record*, vol. 151 (June 21, 2006), p. H4336.

²¹ Six representatives spoke in support S. 2590 on the floor of the House, including Danny Davis and Henry Waxman. “Federal Funding Accountability and Transparency Act of 2006” remarks in the House, *Congressional Record*, daily edition, vol. 151, (September 13, 2006), H6498-H6501.

subgrantees and subcontractors is not gathered uniformly across the government. Some experts believe that recipients of federal financial assistance — particularly states and local governments — will incur substantial costs as they begin to collect and report information on their subrecipients.²² Under S. 2590, recipients and subrecipients of federal assistance could recover the costs associated with new reporting requirements by incorporating those costs into their indirect cost rates; H.R. 5060 had no similar feature, leaving it open to the charge of being an unfunded mandate imposed on award recipients by the federal government.²³

Because no uniform method of collecting detailed information on subcontractors and subgrantees presently exists, S. 2590 directed OMB to conduct a pilot program to determine the most cost-effective and least administratively burdensome approach to implementing a government-wide subaward reporting process. The pilot program was not included in the Senate bill when it was first introduced by Senator Coburn. It was added after concerns were raised about the potential administrative and financial burden new reporting requirements would place on grant award recipients.²⁴ H.R. 5060 did not contain provisions for a pilot program, and was criticized by nonprofit advocates as being “an attack” on federally funded grantees.²⁵

Overview of the Act

The database required in the act is to be implemented in two phases. By January 1, 2008, the new database is required to provide information on entities that are awarded funds directly from the federal government. Entities covered in the first phase of the database include corporations, associations, partnerships, sole proprietorships, limited liability companies, limited liability partnerships, states, and localities. By January 1, 2009, the database is required to include information on subgrantees and subcontractors that receive federal funds through a primary award recipient. The act excludes individual recipients of federal assistance, and

²² Telephone conversation between the author and Jerry Keffer, Chief of the Federal Programs Branch at the U.S. Census Bureau, Aug. 17, 2006. Letter from R. Thomas Wagner, Jr., President of National Association of State Auditors, Comptrollers, and Treasurers (NASACT), to Sen. Tom Coburn, July 5, 2006, at [http://www.nasact.org/techupdates/downloads/CRC/LOC/07_06-NASACT_coburn.pdf].

²³ An indirect cost rate is a percentage, negotiated between a recipient of federal funds (a grantee or a contractor) and a federal agency, which is used to calculate the amount the recipient may be reimbursed for the indirect costs associated with administering the federal award. For example, if a grantee expended \$100,000 in direct costs administering a federal grant program, and it had an indirect cost rate of 10%, then the grantee could request reimbursement from the federal awarding agency for \$110,000 (the total direct costs plus an additional 10%).

²⁴ Letter from R. Thomas Wagner, President of National Association of State Auditors, Comptrollers and Treasurers, to Sen. Tom Coburn, July. 5, 2006.

²⁵ Testimony of Gary Bass, President of OMB Watch, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006.

organizations with less than \$300,000 in total income are not required to report on subawards.²⁶

Consistent with the objective of providing to the public comprehensive information on federal financial assistance, virtually all categories of awards will ultimately be covered by the database, including grants, contracts, subgrants, subcontracts, loans, cooperative agreements, delivery orders, task orders, and purchase orders. Two special provisions address particular types of transactions: individual transactions of less than \$25,000 are exempt, and credit card transactions will not be included until October 1, 2008.

To achieve greater transparency, the act requires the database to provide the following information about each federal award:

- Name of entity receiving award
- Amount of award
- Type of award (e.g., grant, loan, contract)
- Agency funding award
- A North American Industry Classification System (NAICS) code of the recipient or a Catalog of Federal Domestic Assistance (CFDA) number (where applicable)²⁷
- Program source
- Award title that describes the purpose of the funding
- Location of recipient
- City, state, congressional district, and country in which award performance primarily takes place
- Unique identifier for entity receiving award and of the parent entity of recipient, if one exists
- Any other information specified by OMB

S. 2590's sponsors, mindful of the criticism that government databases are often difficult for non-experts to use, included language that requires OMB to ensure the database is accessible through a "searchable website."²⁸ The act thus requires that the website permit users to (1) conduct a search of federal funding by any of the data elements listed above, and (2) determine the total amount of federal funding awarded

²⁶ Entities with less than \$300,000 may be required to report on subawards in the future if the Director of OMB determines this requirement is not unduly burdensome to those entities.

²⁷ The Census Bureau assigns an NAICS code to each business establishment for the purposes of collecting and analyzing statistical data on the U.S. economy. NAICS codes are two to six digits long, with each digit representing information about the economic sector in which the establishment conducts the largest portion of its business. CFDA numbers are assigned by the General Services Administration (GSA) to all federal domestic assistance programs. A CFDA number usually has five digits, where the first two digits represent the federal agency and the last three digits indicate the specific program for which the agency is providing funding.

²⁸ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Federal Financial Accountability and Transparency Act of 2006*, S.Rept. 109-329.

to an entity by fiscal year. In addition, the act stipulates that the website must provide information in a downloadable format, and that agencies are required to post new information to the website within 30 days of making an award. The legislation also requires the new website to allow the public the opportunity to provide input on the site and recommend improvements.

Three major financial assistance databases are identified in the act as likely sources of information for the new website — the Federal Procurement Data System (FPDS), the Federal Assistance Award Data System (FAADS), and Grants.gov.²⁹ According to the provisions in S. 2590 as initially passed by the House and Senate, a user must be able to access information from all three databases in a single search. The bill was explicit on this point; it would not be acceptable merely to provide links to these or other databases, because that would force users to search for information at different websites. The “single search” provision of S. 2590 was modified by S. Con Res. 114, allowing grants and contracts to be searched separately on the new public website. S.Con.Res. 114 also added another reporting requirement: the Government Accountability Office is to provide Congress with a compliance report on P.L. 109-282 no later than 2010.

As previously noted, the act does not require information on subcontractors and subgrantees to be included in the database until January 1, 2009. The delay reflects the fact that data on subrecipients are not currently collected consistently across federal agencies and programs. To address existing gaps in the data on subawards, the act requires OMB to implement a pilot program that tests the feasibility of having primary recipients provide information on their subgrantees and subcontractors. There is a provision in the legislation that allows federal award recipients and subrecipients to be reimbursed for the costs associated with collecting and reporting data on subrecipients. The act also specifies that any requirements for collecting data on subawards made by state and local governments under block and formula grants be cost-effective. According to CBO, no unfunded mandate would be placed on recipients or subrecipients for complying with the act.³⁰

The act also requires OMB to submit an annual report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform. The report is to include data on public usage of the website, an assessment of the reporting burden on federal award and subaward recipients, and

²⁹ The Federal Procurement Data System is a database of federal contracts maintained by GSA, and the Federal Assistance Award Data System is a database of federal grants maintained by the Census Bureau. Grants.gov is part of the E-Government initiative, and it permits grant seekers to find, apply for, and manage federal grants through a single Web portal. All entities that apply for federal assistance through Grants.gov are assigned a unique identifier known as a Data Universal Numbering System (DUNS) number. Complex entities, such as state or local governments, may have multiple DUNS numbers, making it difficult, at times, to link subunits to the parent entity.

³⁰ U.S. Congressional Budget Office, *S. 2590: Federal Funding Accountability and Transparency Act of 2006*, Aug. 9, 2006, at [http://www.cbo.gov/showdoc.cfm?index=7483&sequence=0].

an explanation of any extension of the subaward reporting deadline. The act also requires OMB to post a copy of the report on the Web.

Implementation Issues

The legislation's broad appeal is explained in part by its non-controversial objective: to increase accountability and reduce wasteful spending by making government operations more transparent. Yet, while support for the *intent* of S. 2590 is widespread, several issues regarding its implementation should be noted.

Reliability of Underlying Data

A database of the breadth and depth contemplated by the Federal Funding Accountability and Transparency Act is only as useful as the quality of the information that populates it. As noted previously, the act refers to three existing databases as likely sources of information for the new public database: FAADS, FPDS, and Grants.gov. The information in Grants.gov is not currently available to the public, and the quality of the data it contains is unknown. A number of observers have cautioned that a database of federal assistance relying on information from FAADS and FPDS would be of limited value. Both government officials and knowledgeable members of the public describe significant weaknesses in FAADS and FPDS — such as incomplete and inaccurate information — that cannot be quickly corrected. These observers suggest that substantial changes in the collection, reporting, and verification of information relating to federal assistance awards would likely be necessary before FAADS and FPDS could be considered reliable sources of information.

In a 2005 report, GAO noted that FPDS users lacked confidence in the data provided, largely because there was no rigorous system in place to ensure the data were accurate and complete.³¹ This problem has not been resolved.³² A panel of procurement experts recently attempted to use FPDS in their evaluation of federal contracting operations, but reportedly found so many errors in the data that the chairman declared that “FPDS is not a reliable database.”³³ One reason the data are inaccurate is human error; contract information may be incorrectly entered into FPDS by inexperienced users who have received minimal training.³⁴ FPDS data are also notoriously incomplete. For example, the Department of Defense — which accounts for 60% of all federal contract actions — is only beginning to feed information on its

³¹ U.S. Government Accountability Office, *Improvements Needed to the Federal Procurement Data System-Next Generation*, GAO-05-960R, Sept. 27, 2005, pp. 1-2.

³² In an e-mail between the author and Rod Lantier, Director of FDPS at GSA, August 22, 2006, Mr. Lantier wrote that there is no ongoing data verification, only an annual “confirmation” from the 24 Chief Financial Officers Act agencies that they entered the data as accurately as possible.

³³ Chris Gosier, “Contracts database short on info, long on problems,” *Federal Times*, July 31, 2006, p. 5.

³⁴ Ibid.

contracts into FPDS.³⁵ Moreover, agencies vary in the degree to which they fill out the fields in the database, resulting in data of uneven quality.³⁶ In a recent example, FPDS users reported that the database failed to consistently identify contracts related to Hurricane Katrina recovery efforts that were awarded without competition.³⁷ Finally, data on subcontracts is not contained in FPDS, but instead is reported in an entirely separate database, the Electronic Subcontracting Reporting System (eSRS) — a system that does not appear to capture all of the information on subrecipients required by the act.³⁸

Similar problems affect FAADS, the government's primary source of grant award information. In a recent review of 86 federally funded grant programs, GAO determined that in the majority of cases, the administering agencies provided no data, incomplete data, or inaccurate data to FAADS over a three-year period.³⁹ The report concluded that these problems occurred because (1) the Census Bureau lacked the resources to ensure agencies were submitting accurate and timely data, (2) agency program officials lacked knowledge of FAADS reporting requirements, and (3) agencies had not implemented sufficient oversight to ensure they were submitting accurate data. A Census Bureau official concurred with these findings, adding that a number of data elements required by S. 2590 are not uniformly captured by federal agencies or grant award recipients, such as information on subrecipients and the congressional district in which federal funds are spent.⁴⁰ The official also noted that agencies are currently required to update their information in FAADS on a quarterly basis, so it may take time for agencies to develop the capability to update FAADS within 30 days of making an award, as S. 2590 requires. Given the amount of work necessary to enhance the scope, quality, and timeliness of information reported to FAADS, the official was skeptical that the database would meet the bill's requirements by the January 1, 2008, deadline.

Members of Congress have also expressed concerns about FPDS and FAADS. During floor debate of the bill in the House, one supporter cautioned that S. 2590's potential to improve oversight of Federal funds, while substantial, would be largely determined by the degree to which improvements in FPDS and FAADS were made

³⁵ Ibid.

³⁶ Testimony of Gary Bass, President of OMB Watch, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006.

³⁷ Chris Gosier, "Contracts database short on info, long on problems," p. 5.

³⁸ eSRS is managed by the Small Business Administration. According to the eSRS website, the system replaces paper forms SF-294, Subcontracting Report for Individual Contracts, and SF-295. Summary Subcontract Report. See [<http://www.esrs.gov/>].

³⁹ U.S. Government Accountability Office, *Rural Economic Development: More Assurance Is Needed that Grant Funding Is Accurately Reported*, GAO-06-294, Feb. 24, 2006, pp. 23-34.

⁴⁰ Telephone conversation between the author and Jerry Keffer, Chief of the Federal Programs Branch U.S. Census Bureau, Aug. 17, 2006.

during implementation.⁴¹ Another supporter expressed concern that the problems with FPDS and FAADS were so significant, that “if the administration is not committed to making this legislation work, all we will get is another incomplete and hard-to-use database.”⁴²

Another point of view suggests that FAADS and FPDS do not need to be error-free in order to help accomplish the bill’s objectives. Even with gaps in the data, it is argued that a publicly accessible database on federal financial assistance will constrain funding for earmarks and arguably “wasteful” projects if members of the executive and legislative branches are concerned those awards might be in the database.

OMB Watch Database. OMB Watch has announced its intention to launch a website in October 2006 called “FedSpending.org” that will provide information on federal grants and contracts in a manner very similar to the database mandated under the act.⁴³ By providing the public with immediate access to data on federal awards through a free website, OMB Watch said it hopes FedSpending.org will “serve as a baseline for OMB’s version” of the database — which is not required to be online until 2008 — and that the government will “feel a sense of urgency to improve the quality of its information on spending.”⁴⁴ However, to the extent that FedSpending.org relies on the FPDS and FAADS databases for information, the same concerns regarding reliability and coverage will apply.

Implementation Costs

Concerns have also been expressed regarding the cost of implementing the database contemplated by the Federal Funding Accountability and Transparency Act. Two types of costs are of concern — the cost of implementing the act as a whole and costs associated with the development of information on subgrantees.

Overall Implementation Costs. In response to concerns about the reliability and completeness of the FPDS and FAADS databases, Clay Johnson, the deputy director for management at OMB, said the new database will meet the requirements of the act within the time frame established by the legislation.⁴⁵ Johnson also said that implementing the new public database will “cost a little money, not a lot” because “most of the data exists” already — a view that appears

⁴¹ Rep. Danny Davis, ‘Federal Funding Accountability and Transparency Act of 2006’ remarks in the House, *Congressional Record*, daily edition, vol. 151, (September 13, 2006), H6498-H6501.

⁴² Rep. Henry Waxman, *ibid.*

⁴³ Letter from Gary Bass, OMB Watch Executive Director, to OMB Watcher, Sept. 26, 2006, at [<http://www.ombwatch.org/article/articleprint/3608-1/82>].

⁴⁴ *Ibid.*

⁴⁵ Johnathan Nicholson, ‘Lawmakers Pledge Oversight On New Spending Database Effort,’ *Daily Report for Executives*, Sept. 15, 2006, at [<http://pubs.bna.com/ip/BNA/DER.NSF/9311bd429c19a79485256b5700ace13/a6458e8c2/9152006>].

somewhat at odds with previously discussed evidence that there are significant gaps in the data and that collecting this information could be costly.⁴⁶

By asserting that the data required by the act is already available, OMB may have affected the Congressional Budget Office (CBO) cost estimate for implementing the law. According to CBO, it will cost \$15 million to establish and maintain the new database of federal assistance between 2007 and 2011.⁴⁷ The CBO estimate, however, was based on OMB's assurance that "the government currently collects all of the information needed to create a comprehensive database on federal spending."⁴⁸ The estimate may thus reflect the cost of simply combining existing systems without fully accounting for the costs of improving the quality of the data in those systems. One industry observer was quoted as saying that enhancing and integrating existing data sources to meet the requirements of the act was a "complex" problem, and that implementing the database would more likely cost "tens or hundreds of millions of dollars," not the \$15 million projected by CBO.⁴⁹ OMB said it would release an implementation plan in January 2007, which may address issues surrounding the timing and cost of improving existing data sources.⁵⁰

Subgrantee Information Costs. In a letter to Senator Coburn, the National Association of State Auditors, Comptrollers, and Treasurers (NASACT) expressed strong reservations about the potential financial and administrative burden that the bill's reporting requirements would impose on state and local governments.⁵¹ In particular, NASACT noted that collecting data on subgrantees would be "very, very costly" for state and local governments, since federal grant funds are often passed down multiple levels (e.g., a state receiving federal assistance gives a subgrant to organization A, which in turn gives a subgrant to organization B). Additional costs could be incurred under the bill, NASACT said, if state and local grant recipients were required to modify their financial systems to collect and report any other new information. After S. 2590 was amended to include the pilot program for collecting information on subgrantees, NASACT said it supported the bill with the new language, but also noted that it still believed "obtaining all the required information will be a challenge."⁵²

⁴⁶ Ibid.

⁴⁷ U.S. Congressional Budget Office, *S. 2590: Federal Funding Accountability and Transparency Act of 2006*, Aug. 9, 2006, at [http://www.cbo.gov/showdoc.cfm?index=7483&sequence=0].

⁴⁸ Ibid.

⁴⁹ Jenny Mandel, "OMB says new search tool will reflect accurate spending data," *GovExec.Com*, Sept. 14, 2006, at [http://www.govexec.com/dailyfed/0906/091406m1.htm].

⁵⁰ Jonathan Nicholson, "Lawmakers Pledge Oversight On New Spending Database Effort."

⁵¹ Letter from R. Thomas Wagner, Jr., President of NASACT, to Sen. Tom Coburn, July 5, 2006, at [http://www.nasact.org/techupdates/downloads/CRC/LOC/07_06-NASACT_coburn.pdf].

⁵² Letter from Jan I. Sylvis, President of NASACT, to Sen. Tom Coburn, Sept. 5, 2006.

Identification of “Earmarks”

Although one of the stated purposes of the legislation is to enable the public to use the on-line database to identify congressional “earmarks,” it is unclear how users of the database created by the legislation would actually be able to do this, since neither FAADS nor FPDS collects that information. Not all grants, loans, or contracts are congressionally directed; some are at the discretion of the responsible federal agency. Unless the congressionally-directed items in the new database are specifically identified as such, the database will be of limited value for purposes of earmark identification.

Also, the manner in which a funding action is described under the “award title” field may lead the public to draw different conclusions about the value of a given federally funded project. To use an egregious example, a \$100 million grant may be alternatively described as funding for, “planning and development of an interconnected transportation system important to commerce and travel,” or, “a highway to a virtually uninhabited village.” By the same token, an earmarked project that some believe has merit may be described in a manner that puts it in an unfavorable light. In this way, award descriptions may influence the public’s perception of whether a funding action is “wasteful” or not.

Concluding Observations

As noted previously, the underlying logic of the Federal Funding Accountability and Transparency Act is that, by providing citizens with information on federal assistance awards through an online database, government officials will be less likely to fund earmarks and arguably “wasteful” projects. To put this argument succinctly: greater transparency will yield greater accountability. Most observers agree that in order for a public database of federal awards to provide maximum transparency, it must encompass as broad a range of financial assistance categories as possible. The database to be established pursuant to the act would presumably provide substantial transparency, since it covers all forms of federal financial assistance, including contracts. Arguably, the database would also provide transparency by phasing in information on subcontractors and subgrantees, thus allowing the public to track the flow of federal funds down to the level of the ultimate recipient.

Although the creation of the database may require more time or money than some estimates suggest, President Bush, the deputy director of OMB, and Senator Coburn have all indicated they will provide support and oversight during implementation. In remarks prior to signing the legislation, President Bush said the act was an “important step” that “empowers the American taxpayer” with information that can be used to “demand greater fiscal discipline” from both the executive and legislative branches of government.⁵³ The President also linked the act to a broader agenda of increasing accountability in federal spending, including earmark reform and the line-item veto. President Bush’s comments suggest that the

⁵³ The White House, Office of the Press Secretary, “President Bush Signs Federal Funding Accountability and Transparency Act,” press release, Sept. 26, 2006.

administration is committed to the act and may be prepared to provide the resources needed to implement the database with complete and accurate information, even if the costs exceed OMB's current expectations. Clay Johnson, the deputy director for management at OMB, was quoted as saying, "We will not be going public with information that is not worthy of the public."⁵⁴ The original sponsor of S. 2590, Senator Coburn, has also said that "there will be oversight to make sure we're making progress" implementing the database in accordance with the legislation.⁵⁵

Finally, the new law may direct attention to increased transparency on the revenue side of federal fiscal operations. In the Senate report accompanying S. 2590, the additional views of Senators Coburn and Lautenburg included the statement that, "Transparency in government decision-making should not be limited to simply spending; it should be extended...to the tax code." This sentiment was echoed by Senator Obama, who said during floor debate on the bill that "greater transparency of targeted tax benefits" was another step in improving government accountability and performance.⁵⁶ Given this objective, legislation seeking to increase transparency in the tax code may be supported by some of the same government officials and advocacy groups that supported S. 2590.

⁵⁴ Jonathan Nicholson, "Lawmakers Pledge Oversight On New Spending Database Effort."

⁵⁵ Ibid.

⁵⁶ *Congressional Record*, vol. 152, (Sept. 7, 2006), p. S9211.